IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2423 OF 1993

1) The Secretary,)
The South Indian Association)
Shastri Nagar, Dombivli (W).)
2) The South Indian Association's)
High School and Jr. College,)
Shastri Nagar, Dombivli (W).).. Petitioners.

Versus

1) Mrs. Sunita Shrikant Sathe,)
C-5, Shiva Kripa Society,)
Nana Shankar Seth Road,)
Dombivli (W).)
2) Education Officer,)
Zilla Parishad, Thane.).. Respondents.

Smt. Anupama B. Shah for the Petitioners.

Shri C. H. Purnani for Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 20, 2005.

JUDGMENT :

The Petitioner is an education society and runs the South Indian Association's High School and Junior College at Dombivli. The Respondent No.1 was appointed as an Assistant Teacher in that school. The Petitioner has challenged the impugned order of the School Tribunal dated 11th March, 1993 reinstating the Respondent's services with the Petitioners Society.

2. The petitioners issued an advertisement inter alia in the Indian Express, Bombay on 14th April, 1990 inviting applications for the academic year 1990-91 for full time S.S.C. D.Ed. teachers belonging to the reserved category i.e. SC/ST/NT. The respondent No.1 appears to have applied and was appointed by the petitioners as an Assistant Teacher in a clear vacancy for the academic year 1990-91 for the fixed period from 11th June, 1990 till the end of the academic year, vide Exhibit "B".

3. The respondent was granted approval for the one academic year only for the period 11th June, 1990 till the end of academic year, vide order dated 19th December, 1990.

4. For the next academic year the respondent's services were continued for one more academic year

i.e. 1991-92 by order dated 13th June, 1991, vide Exhibit "B". The respondent's services were terminated by a letter dated 7th December, 1991 with effect from 17th January, 1992, at the end of a notice period of one month commencing from 18th December, 1991.

5. The respondent appealed against the order of termination to the School Tribunal which set aside the termination and directed reinstatement by the impugned order. Reasons for setting aside the termination are as follows:

(a) That the respondent's appointment was not in a reserved vacancy.

(b) That the termination was not under the authority of the Management of the Petitioners Society.

6. Having heard the learned Counsel for both the parties, I am of view that the impugned order is not sustainable. It is clear from the facts of the case that the petitioners had advertised for appointment of a teacher in reserved category. The respondent who was an open category candidate was, therefore,

temporarily appointed by separate orders for a fixed period of one academic year by two orders issued at the beginning of the academic year. The reasons for the termination is that the Education Officer wrote to the Petitioner Society, vide letter dated 26th November, 1991, that reserved category candidates are now available and therefore the petitioner should take necessary action. This itself resulted in the termination. I am, therefore, satisfied that the respondent's appointment was not in a clear vacancy and was of a temporary nature for a fixed period. Therefore, in view of the law laid down by the Supreme Court in **Hindustan Education Society and another vs. Sk. Kaleem Sk. Gulam Nabi & others,** 1998 (2) Bom.C.R. 146, the respondent's appointment cannot be said to be of permanent appointment on probation. The findings of the Tribunal that the respondent was appointed as a probationer in a permanent and clear vacancy is not sustainable for two reasons. Firstly, that the appointment was not of permanent nature, but was a temporary appointment for a fixed period and secondly, the appointment was in a vacancy which was meant for a reserved category candidate. The Tribunal's observations that the vacancy was not meant for a reserved category candidate because the advertisement stated that the applications were

invited from ST/SC/NT i.e. three categories is besides the point an extraneous to the questions whether in fact the vacancy was meant for reserved category and whether the respondent who was an open category candidate was appointed in such a vacancy. In fact, the Tribunal has itself referred to the roaster produced by the petitioner, which showed that the respondent was appointed against roaster No.58, meant for a Scheduled Tribe candidate.

7. The other reason given by the Tribunal for setting aside the termination is that the termination was not under the authority of the management but was an act of the Headmistress alone. In taking this view the Tribunal has referred to a resolution of the Managing Committee which took note of the fact that the Education Department had sent two teachers to be appointed against the backlog and therefore directed the Headmistress to take appropriate action. This resolution is dated 23rd November, 1991. Unfortunately, the Tribunal has referred to it as a resolution dated 21st December, 1991 and came to the conclusion that this resolution of the Managing Committee is subsequent to the termination order dated 7th December, 1991. This finding of the Tribunal is perverse and not sustainable.

8. In the result, the petitioners must succeed. Rule is made absolute in terms of prayer clause (a), which reads as follows:-

> (a) That this Honourable Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, direction or order quashing the Judgment and order dated 11-3-1993, passed by the School Tribunal in Appeal No. GEN/18/TH/4/92.

Sd/-

S. A. BOBDE, J.

TRUE COPY

(A. M. TAILOR)
Personal Assistant to the
Hon'ble Shri Justice S.A.Bobde.